

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING
of ARM 17.8.1213 pertaining to )	ON PROPOSED AMENDMENT
requirements for air quality )	
operating permit content )	
relating to compliance )	(AIR QUALITY)

TO: All Concerned Persons

1. On November 5, 2003, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., October 27, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.1213 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT  
CONTENT RELATING TO COMPLIANCE (1) through (6)(b) remain the same.

(7) Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include the following:

(a) and (b) remain the same.

(c) A requirement that the compliance certification include the following:

(i) remains the same.

(ii) the identification of the method(s) or other means used by the owner or operator for determining the status of compliance with each term and condition during the certification period, ~~and whether such methods or other means provide continuous or intermittent data.~~ Such methods and other means include, at a minimum, the methods and means required under ARM 17.8.1212. ~~If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information;~~

(iii) the status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period

was continuous or intermittent. The certification shall be based on the method or means designated in (7)(c)(ii) above. The certification must identify each deviation and take it into account in the compliance certification. The certification must also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in ARM 17.8.1501 occurred; and (iv) and (d) remain the same.

AUTH: 75-2-217, 75-2-218, MCA  
IMP: 75-2-217, 75-2-218, MCA

REASON: This action is in response to the U.S. Environmental Protection Agency's (EPA's) direct final action noticed in the Federal Register, 68 FR 38517, amending 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C). It is necessary for the state to adopt the revisions to the federal regulations to maintain the state's delegation of authority from EPA and the state's primacy to enforce the Title V operating permit program.

ARM 17.8.1213, as it currently reads, requires responsible officials in their annual certifications to identify each term and/or condition of the permit, the method(s) or other means used to identify the status of compliance, and whether the methods used provide continuous or intermittent data. The responsible official then identifies the status of compliance with each permit term (whether the facility was in or out of compliance). The current language incorporates federal regulation language that was adopted in 1997 but later was challenged in a court action filed by the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry).

The proposed amendments would adopt the federal regulation change clarifying the annual compliance certification requirements and returning to language adopted in a 1992 federal rulemaking. Under the proposed amendments, ARM 17.8.1213 would require responsible officials to identify each term and/or condition of the permit and whether or not compliance with that term or condition was continuous or intermittent during the reporting period.

The proposed amendments would provide more information to the Department and the public, as the status of compliance would be more directly described. Knowledge of the method and the type of data it produces is secondary to the description of compliance. The Department has requested that facilities explain their interpretations of the terms "continuous" and "intermittent" to clarify those interpretations in annual compliance certifications under the current rule and would continue to request such information under the proposed amendments.

4. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-

0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us, to be received no later than 5:00 p.m. November 13, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Kelly O'Sullivan, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairperson

Reviewed by:

David Rusoff  
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 6, 2003.